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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,084	05/31/2001	Jurgen Niessen	P01,0182	9132
26574	7590	12/31/2003	EXAMINER	
SCHIFF HARDIN & WAITE 6600 SEARS TOWER 233 S WACKER DR CHICAGO, IL 60606-6473			CORRIELUS, JEAN M	
			ART UNIT	PAPER NUMBER
			2172	
DATE MAILED: 12/31/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/857,084	JURGEN NIESSEN ET AL.,
	Examiner	Art Unit
	Jean M Corrielus	2172

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 03 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This office action is in response to the amendment filed on October 03, 2003, in which claims 1-10 are presented for further examination.

Response to Arguments

2. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

3. Applicants are required to furnish the formal drawings in response this office action. No new matter may be introduced in the required drawing. Failure to timely submit a drawing will result in **ABANDONMENT** of the application.

Claim Rejections - 35 U.S.C. § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recited "monitoring for availability of a system function" and "respective information", however, it is not clear as to what the applicant meant by "system function" and

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what kind of respective information which describes condition under which the availability of a system function are to be accessed. Claim 1, line 1 recites “a system function”, line 3 recites “a system function” and line 5 recites “a system function”. It is unclear whether the applicant is referring to a different system function. It is wonder whether there is a relationship between the recited “system function” set forth in the claim. Also, claim 1 line 9 recites “said function”. The examiner can not determine which one of the system function the applicant is referring to. Claims 1-10 recite “system component”, however, it is unclear which system components the applicant is referring to. Applicant is advised to amend the claim to solve the 112 rejection set forth in the claim.

Claim Rejections - 35 U.S.C. § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being

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examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-10 as best understood by examiner are rejected under 35 U.S.C. 102(e) as being anticipated by Connelly et al., (hereinafter “Connelly”) US Patent no. 6594,786.

As to claim 1, Connelly discloses a fault tolerant availability which includes agents, wherein the agents monitor availability with timestamp and report uptime and downtime events to a server, wherein agents on nodes of a cluster monitor cluster, node and package availability and cluster configuration changes and report these event to the server. In particular, Connelly discloses the claimed “storing in a database of said computer system, for a system function monitored for availability, respective information which described conditions under which said availability of a system function are to be assessed as existing or no longer existing” (col.3, lines 24-27; lines 40-43; col.4, lines 1-4, lines 61-67); and “utilizing said information, when a change in a state of a component of said computer system has taken place, to assess whether said change that has taken place results, or said change that is intended to take place would result, in a change in terms of the availability of said system function” detecting the change and the status that effects availability (col.3, lines 43-45; lines 50-56; col.4, lines 61-67).

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As to claim 2, Connelly discloses the claimed “marking in a database of said system, component mappers for components which contribute to said availability of said system function” nodes, clusters and packages (software, or mapper) are collectively referred to as monitored entities (col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37); and “utilizing said marked component mappers when a change in a state of a component has taken place or is intended to assess whether said change in state that has taken place results or said intended change in state would result in a change in said availability of said system function” (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37)

As to claim 3, Connelly discloses the claimed “recording a respective current functional state of a system component for said system component in the database” (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.7, lines 2-25); “recording by said database for each system component whether said component contributes to said availability of a system function monitored for availability, and if so for which system function or system functions said component contributes to said availability” (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35); and “assessing when a change in a state of a component of said system has taken place or is intended using data stored in said database for other system components to assess whether said availability of a system function monitored for availability

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changes or would change as a result of such a change" (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37).

As to claim 4, Connelly discloses the claimed "marking using a stipulation regarding which system function is monitored for availability, among components of said system which are mapped in a database, those components which are necessary for said availability of said system function" (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.7, lines 2-25); "marking in addition a respective state of said components of said system which are mapped in the database for said components" (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35); and "assessing when a change in a component state has taken place or indicated whether said change results or would result in a change in availability of said system function" (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37).

As to claim 5, Connelly discloses the claimed "storing by said database stores for each system function regarded as being relevant to availability information which describes conditions under which said availability of a system function is to be assessed as existing or no longer existing" (col.3, lines 43-45; lines 50-56; col.4, lines 61-67; col.5, lines 9-10, lines 31-35; col.6, lines 14-21; lines 23-37; col.8, lines 28-45; col.8, line 55-col.9, line 35).

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As to claims 6-10, the limitations of claims 6-10 have been noted in the rejection of claims 1-5 above. They are, therefore, rejected under the same rationale.

Conclusion

8. Any inquiry concerning this communication or early communication from the Examiner should directed to **Jean M. Corrielus** whose telephone number is (703) 306-3035. The Examiner can normally be reached on Tuesday-Friday from 7:00am to 5:30pm. If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu, can be reached on Monday-Friday from 9:00 a.m.-6:00 p.m. at (703)305-4393.

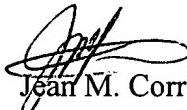
Any response to this action should be mailed to: Commissioner of Patents and Trademarks Washington, D.C. 20231

or faxed to: (703)872-9306, (for formal communications intended for entry)

Or: (703)872-9306 (for informal or draft communications, please label "PROPOSED" or "DRAFT") Hand-delivered responses should be brought to Crystal Park II, 2021 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

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Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-9600.



Jean M. Corrielus

Primary Examiner

December 26, 2003